

What to Know About Post-Grant Review and the Biotech Industry

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The AIA made several significant changes to United States patent law, including the establishment of post-grant proceedings before the Patent Trials and Appeals Board (PTAB) where patents have the potential of being invalidated in a much more efficient and expedient manner. In the five years since the AIA was enacted, two types of post-grant proceedings, Inter Partes Review (IPR) and Post-Grant Review (PGR), have become increasingly popular tools for biotechnology companies to resolve patent disputes.

A Comparison of Litigation, IPR, and PGR

To use post-grant proceedings before the PTAB effectively, it is important to observe how patent invalidity challenges in district court compare to post-grant proceedings (i.e., IPRs and PGRs) before the PTAB. Some sophisticated strategies integrate both district-court proceedings and post-grant proceedings before the PTAB to effectively stage a multifront attack during patent disputes. For example, some strategies may employ a combination of both district court litigation and an IPR proceeding before the PTAB to increase likelihood of a favorable outcome and oftentimes increase the motivation for parties to settle sooner, or position a case for success should litigation ensue.

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